

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

IN THE INTEREST OF:	)	No. ED103681
	)	
K.M.A.-B.	)	Appeal from the Circuit Court
	)	of St. Louis County
	)	Hon. Thea Anne Sherry
	)	Filed: July 12, 2016

J.B. (“Father”) appeals from the judgment terminating his parental rights.

REVERSED AND REMANDED.

Division One holds:

There was not substantial evidence to support the trial court’s finding that Father’s marijuana use constituted a “chemical dependency” as defined in Section 211.447.5(2)(b) or Section 211.447.5(3)(d). Therefore, that condition cannot support termination on grounds of either abuse and neglect or failure to rectify.

Father’s refusal to comply with the service plan’s directive and court orders to become and remain drug free, however, could support termination on the failure to rectify ground, but only if there were also adequate findings supported by substantial evidence that the drug use itself was potentially harmful to the child. No such findings were made in this case. Coupled with the misstatements of the law regarding the required findings under Section 211.447.5(3), the judgment must be reversed.

Opinion by: Robert G. Dowd, Jr., P.J.

Mary K. Hoff, J., concurs in result in separate concurring opinion.

Roy L. Richter, J., concurs in separate concurring opinion of Mary K. Hoff, J.

Attorney for Appellant:

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<p><b>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</b></p>
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